

187
IMPACT OF CONTRACT BUNDLING ON SMALL BUSINESS CONCERNS: RECEIPT OF REPORT FROM U.S. SMALL BUSINESS ADMINISTRATION ON CONTRACT BUNDLING

Y 4. SM 1:103-22

Impact of Contract Bundling on Small... **RING**

BEFORE THE
SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND
TOURISM

OF THE
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

WASHINGTON, DC, JUNE 10, 1993

Printed for the use of the Committee on Small Business

Serial No. 103-22



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

69-437-

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-043280-4

13

IMPACT OF CONTRACT BUNDLING ON SMALL BUSINESS CONCERNS: RECEIPT OF REPORT FROM U.S. SMALL BUSINESS ADMINISTRATION ON CONTRACT BUNDLING

Y 4. SM 1:103-22

Impact of Contract Bundling on Small...

RING

BEFORE THE

SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND
TOURISM

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

WASHINGTON, DC, JUNE 10, 1993

Printed for the use of the Committee on Small Business

Serial No. 103-22



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

69-437-

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-043280-4

U.S. GOVERNMENT PRINTING OFFICE
1993

155
U.S. GOVERNMENT PRINTING OFFICE
1993

COMMITTEE ON SMALL BUSINESS

JOHN J. LaFALCE, New York, *Chairman*

NEAL SMITH, Iowa
IKE SKELTON, Missouri
ROMANO L. MAZZOLI, Kentucky
RON WYDEN, Oregon
NORMAN SISISKY, Virginia
JOHN CONYERS, Jr., Michigan
JAMES H. BILBRAY, Nevada
KWEISI MFUME, Maryland
FLOYD H. FLAKE, New York
BILL SARPALIUS, Texas
GLENN POSHARD, Illinois
EVA M. CLAYTON, North Carolina
MARTIN T. MEEHAN, Massachusetts
PAT DANNER, Missouri
TED STRICKLAND, Ohio
NYDIA M. VELAZQUEZ, New York
CLEO FIELDS, Louisiana
MARJORIE MARGOLIES-MEZVINSKY,
 Pennsylvania
WALTER R. TUCKER III, California
RON KLINK, Pennsylvania
LUCILLE ROYBAL-ALLARD, California
EARL F. HILLIARD, Alabama
H. MARTIN LANCASTER, North Carolina
THOMAS H. ANDREWS, Maine
MAXINE WATERS, California

JAN MEYERS, Kansas
LARRY COMBEST, Texas
RICHARD H. BAKER, Louisiana
JOEL HEFLEY, Colorado
RONALD K. MACHTLEY, Rhode Island
JIM RAMSTAD, Minnesota
SAM JOHNSON, Texas
WILLIAM H. ZELIFF, Jr., New Hampshire
MICHAEL A. "MAC" COLLINS, Georgia
SCOTT McINNIS, Colorado
MICHAEL HUFFINGTON, California
JAMES M. TALENT, Missouri
JOE KNOLLENBERG, Michigan
JAY DICKEY, Arkansas
JAY KIM, California
DONALD A. MANZULLO, Illinois
PETER G. TORKILDSEN, Massachusetts
ROB PORTMAN, Ohio

JEANNE M. ROSLANOWICK, *Staff Director*

STEVEN LYNCH, *Minority Staff Director*

SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND TOURISM,

JAMES H. BILBRAY, Nevada, *Chairman*

NORMAN SISISKY, Virginia
EARL F. HILLIARD, Alabama
KWEISI MFUME, Maryland
EVA M. CLAYTON, North Carolina
RON KLINK, Pennsylvania

RICHARD H. BAKER, Louisiana
JOE KNOLLENBERG, Michigan
SAM JOHNSON, Texas

JOHN FADGEN, *Subcommittee Staff Director*

DUANE DUNCAN, *Minority Subcommittee Professional Staff Member*

CONTENTS

Hearing held on June 10, 1993.....	Page 1
------------------------------------	-----------

WITNESS

THURSDAY, JUNE 10, 1993

Moffitt, Robert J., Associate Administrator for Procurement Assistance, U.S. Small Business Administration	3
---	---

APPENDIX

Letters submitted for the record to Hon. James H. Bilbray:	
Office of Management and Budget, Hon. Leon E. Panetta, Director	19
The White House, President William Clinton	18
U.S. Small Business Administration, Erskine B. Bowles, Administrator	20
Moffitt, Robert J., prepared statement	21
Opening statements:	
Baker, Hon. Richard H.	16
Bilbray, Hon. James H.	14

IMPACT OF CONTRACT BUNDLING ON SMALL BUSINESS CONCERNS: RECEIPT OF REPORT FROM U.S. SMALL BUSINESS ADMINISTRATION ON CONTRACT BUNDLING

THURSDAY, JUNE 10, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON PROCUREMENT,
TAXATION, AND TOURISM,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2222, Rayburn House Office Building, Hon. James H. Bilbray (chairman of the subcommittee), presiding.

Chairman BILBRAY. The subcommittee is called to order.

Today, the subcommittee embarks on one of the most important responsibilities, the protection of small business mandates in Federal procurement. Of particular concern to the subcommittee in this area has been the practice by a number of Federal agencies of "bundling" a number of small contracts into one large contract, contracts that could have traditionally been given to small businesses.

I have been in recent contact with both President Clinton and OMB Director Leon Panetta on the issue of protecting small business participation in getting these type of contracts. I have received extremely direct and committed remarks from both of them with their support for this issue, and, at this time, I would like to enter them into the record, if there is no objection.

[The information may be found in the appendix.]

Chairman BILBRAY. However, despite the White House commitment to the protection, it appears that small businesses are still being used as the scapegoats for shoddy and irresponsible cost cutting.

In a time of ever-shrinking Federal budgets and streamlining, small businesses are more aware than most that many contract opportunities are in jeopardy. However, it is patently unfair for small businesses to be denied contracts because Federal procurement officers are trying to cut corners and not take the time to include small businesses in solicitations. Let me assure all of you that this subcommittee will be pursuing this issue very aggressively.

Today, we have Associate Administrator Robert Moffitt of the Small Business Administration coming before us to present to this subcommittee the efforts of the SBA to begin the investigation of

this issue. As Mr. Moffitt headed the team that undertook this effort, I am very pleased to have him here to present to us his insight into this issue. I do regret that Administrator Bowles was unable to also join us, but I understand that Mr. Moffitt brings with him a letter stating the Administrator's deep concern about this matter and the SBA's desire to lead on this issue.

This report was mandated in last year's Small Business Credit and Business Opportunity Act of 1992, which became Public Law 102-366. Section 321 of that legislation called upon the SBA to undertake a study of the question of bundling. Unfortunately, due to lack of data available, this report raises far more questions than it answers. The one clear conclusion is that a number of agencies have chosen for years to brush questions regarding this practice under the rug and have opted to continue a practice that clearly prohibits small businesses from receiving millions of dollars in contracts. I am also particularly concerned that the two agencies that account for over 70 percent of the Federal procurement, the Department of Defense and NASA, did not submit information to the study.

The subcommittee will be asking a number of questions of Mr. Moffitt in order to try to gain some insight into the work that remains to be done and to truly gain some foothold in the gaps that are part of this report. The importance of this hearing is also heightened by ongoing congressional procurement reform efforts in which this subcommittee is also participating, specifically the section 800 report by the Department of Defense and Chairman Conyers' bill, H.R. 2238. It is imperative that before any substantial reform efforts are attempted, the problem of bundling be rectified and its eradication be an intricate part of any congressional efforts.

[Chairman Bilbray's statement may be found in the appendix.]

Chairman BILBRAY. As I have stated, there are a lot of questions which remain unanswered in this report, and I trust that Mr. Moffitt's expertise will shed some light on these questions.

Thank you for coming, Mr. Moffitt, and I will turn it over to my ranking member, Mr. Baker.

Mr. BAKER. Thank you, Mr. Chairman. I appreciate your interest in this matter and calling this hearing. I have a written statement which I would like to submit for the record and would also want to make a few brief remarks concerning the scope and direction of the intention of the study as well as the possible effects of bundling on the military installations. I happen to have a district which has three such facilities, and, regrettably, the report does not inquire into the effects of bundling on small business interests as it relates to the Department of Defense, but have a personal interest in finding out if there are future plans to inquire further. Does this report represent the end conclusion of the process, and what effect might there be if we had looked at Defense Department acquisitions in relation to the issue of bundling?

I have expressed interest in the past in my own legislative effort simply to better define small business set-asides and to, perhaps, require an agency spend some disproportionate share of their Federal funding for procurement within a geographic region in small business procurement supplier contracts. I don't know how we balance in our hunt for efficiency and least cost to taxpayers where

often quantity does generate savings as against the opportunity that small businessmen are deserving as taxpayers to participate in providing services and goods to Federal agencies. But I am certainly interested in hearing the Assistant Secretary's remarks and learning more about what can be done to facilitate access to contracting opportunities for businessmen everywhere.

Thank you, Mr. Chairman.

[Mr. Baker's statement may be found in the appendix.]

Chairman BILBRAY. Mr. Moffitt.

TESTIMONY OF ROBERT J. MOFFITT, ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE, U.S. SMALL BUSINESS ADMINISTRATION

Mr. MOFFITT. Mr. Chairman and members of the subcommittee, it is my pleasure to be here today. Erskine Bowles, the SBA Administrator, asked me to speak on behalf of the agency. He regrets that he cannot be here. However, he did send a letter with me that he would like submitted for the record.

Chairman BILBRAY. Without objection, it is so entered into the record.

[The letter may be found in the appendix.]

Mr. MOFFITT. Mr. Bowles is very concerned by this event of bundling, and I am here today to discuss SBA's study on the practice. This practice, also known as consolidation, umbrella contracting, is widely believed by our small business constituency to be adverse to their interests.

The Small Business Act clearly states congressional intent that a fair portion of Federal Government purchases are to be placed with small business concerns. To encourage successful small business participation in the Federal acquisition process, the Federal Acquisition Regulation enumerates specific procurement practices which increase that likelihood. For example, these practices include dividing proposed large acquisitions of supplies and services into smaller portions and planning acquisitions so that more than one small business concern may perform the work.

Notwithstanding the Federal policy, there has been a lingering concern about the consolidation or bundling of procurement requirements by Federal departments and agencies into umbrella contracts. We have speculated that as Federal contracting agencies down-size their staffs the incidence of bundling will increase. Interestingly, 76 percent of all study respondents confirmed this opinion by saying that contract bundling will provide an opportunity to operate more efficiently through acquisition streamlining, economies of scale, quantity discounts, and the promotion of standardization of products and services.

Nonetheless, we believe that this anticipated trend does not justify or relieve Federal procurement officials of their responsibility to maximize small business access to contracting opportunities. SBA realizes that in some cases bundling is a wise decision when to do so would likely be significantly less costly or the only practical way to satisfy a procurement need.

SBA developed a study plan which was published in the Federal Register on November 25, 1992, and in the Commerce Business

Daily on December 2, 1992. On February 8, 1993, OMB approved the questionnaire which was crafted by SBA to solicit comments on six specific issues. The target audience consisted of SBA personnel, including our procurement center representatives, 17 Federal Government officials, 127 national small business and trade councils and associations with a small business constituency, and 370 randomly selected small businesses. Additional sources of data included GAO reports, Comptroller General decisions, and the Federal Procurement Data Center statistics. They were also reviewed and considered.

The study resulted in the following findings of the study issues:

The impact of bundling is twofold. First, 76 percent of the study respondents speculated that contract bundling would give the Federal procurement activities an opportunity to operate more efficiently.

Second, and conversely, 24 percent of the respondents indicated that contract bundling may also have a negative effect on procurement activities in the Federal Government by diminishing competition, especially small business participation.

Of the study respondents, 97 percent stated that contract bundling would adversely affect small business concerns by restricting small business competition. The study did not reveal any benefits for small businesses as a result of bundling. The Small Business Act, section 15(a), includes a requirement that review of proposed bundled acquisitions by SBA procurement center representatives be made. The Federal Acquisition Regulation requires contracting activities to submit all proposed bundling requirements to the PCR at least 30 days prior to the issuance of the solicitation if the proposed acquisition is for supplies or services which are currently being provided by small businesses.

Buying activities construe bundling as applicable only to those cases in which there is already a small business participation. Further, new and/or modified requirements are not considered bundling because they do not have an incumbent contractor. Therefore, these actions are not submitted for the PCR for review. This supports our recommendation for a more generic definition of contract bundling. It is important to note that the Federal Government has not developed a statistical data bank for bundling data.

In response to the question of the extent to which procuring activities have been combining requirements of goods, services, and construction into single solicitations, 73 percent of the respondents indicated that Federal activities only moderately bundled requirements. However, many of the Government respondents indicated that within the current Federal environment of do more with less, contract bundling can be expected to increase at a rapid rate.

Based on the study findings, SBA concluded its report by presenting for congressional consideration the following 5 recommendations:

One, a single definition of bundling be adopted and used in all discussions on contract bundling.

Two, a mechanism be developed and imposed on Federal contract activities to collect data regarding the use of bundling.

Three, Congress consider committing financial and other resources, including sufficient time for SBA to confirm assertions

about savings or improvements to administrative effectiveness and the actual effect of bundling on small business participation in the procurement process.

Four, obtain assistance from GAO to provide greater expertise in addressing the issues of contract cost and cost effectiveness that resulted from SBA's bundling study.

Five, SBA will take the responsibility for collecting and recording of bundling activities wherever PCR's are located in residence. This would be contingent on a legislative initiative requiring maximum cooperation by all corresponding procurement activities and the establishment of a single definition of bundling for this purpose.

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions that you might have.

[Mr. Moffitt's statement may be found in the appendix.]

Chairman BILBRAY. Thank you, Mr. Moffitt.

I would like to say that the bundling has been a very serious problem with small contractors and small businessmen in my district. We see it all the time. The inclination, especially amongst the Department of Defense, is they would rather deal with one big contractor than deal with a lot of little ones, not for cost savings and efficiency as much as the fact that they would rather have one person they dealt with rather than 20 or 30 small businessmen.

Even though in some of the smaller contracts that even fall below the Davis-Bacon they could actually save money, and, in many cases, the small businessmen actually bid it at a much smaller price. Even on the larger schedule, in the sense that some of the big corporations have come in, and we have Nellis Air Force Base in our district, for instance, and they want to take over all the programs that go on, all the technical programs, all the electronics programs, because they would rather deal with one person rather than deal with many, even though they have been shown that it is not cost efficient.

But, in the study, let me tell you the problem I had. I read the study and, it is so limited in its scope, in the sense of who you have talked to and what has been done, that it just reinforced what all of us were saying, that it is a problem. Every small business thinks it is bad. I am sure every big business thinks it is economically sound to bundle everything together. I think we could have told you the outcome of that study before you took it.

But I think it is important that everybody recognizes that, on both sides of the aisle, we want to help our small businessmen, and, of course, we hope that there is a real aggressive stand in your department to take care of this.

Are you going to be the one who is actually dealing in this matter on a day-to-day basis? Or who is going to be the person in your department that my staff and Mr. Baker's staff would deal with on a daily basis? Are you the guy that we need to work with, or who would it be?

Mr. MOFFITT. Certainly I would be happy to work with you or your staff. It is actually Roger Smith, the Director of Office of Prime Contracts, who was responsible in large part for the study and who is responsible for providing direction to our procurement center representatives who are stationed around the country at the

buying activities. So, it is Mr. Smith and his staff who have direct contact with the people in the field.

Chairman BILBRAY. Mr. Moffitt, how long have you been with the SBA? Are you new in the procedure? I can't remember now. Maybe you said that in your statement, and I just didn't pick it up.

Mr. MOFFITT. I have been with SBA for 19 years.

Chairman BILBRAY. So, you are really a career man.

Mr. MOFFITT. Yes, sir.

Chairman BILBRAY. All right. I am kind of limited. I am dealing with the people just in my district and certainly not in other districts around the country. But we haven't felt since I have been in Congress—this is my 7th year, and Mr. Baker's 7th year, I think we came in together in that class—that the small business local entities are really, out there fighting for the small businesses. I would like to say they have gotten fat and sassy over the years, and they are not really out there trying to get the business.

We just got a procurement officer, and we had him placed out at Nellis for two reasons. We think that is where a lot of the activities come from. Second, we didn't want him contaminated by going into the local office with kind of the attitude we see out there that they are there to answer questions, but they are really not there to be advocates for the small businessmen and to help them sort through these problems. We hear this from all small businesses, whether they are minority owned or nonminority owned or whether they are just across the board.

Are you looking at some sort of procedures out there to maybe invigorate some of these offices to get out there and try to help small businesses or maybe move some people around or shuffle some things around? Some people have been in the same place probably as long as you have been there, 15 to 20 years and, as I mentioned earlier, became very fat and sassy in that area.

Are you planning some innovative programs to really shake up the local units to get them going to try to help small businesses?

Mr. MOFFITT. Well, my office deals primarily with the procurement center representatives and the other procurement specialists who work for SBA, and our people are not in the district offices. They report through the regional offices to my office. Recently, we just concluded a week-long training conference of all our procurement center representatives where we provided them with the latest guidance and the latest direction on how we want to approach some of these problems that small businesses are facing, the shrinking of the opportunities. We want to get out there and look for more opportunities for small business through our breakout program and our small business set-aside programs. We also want to look for additional subcontracting opportunities.

I personally know Hank Ramirez, who is going to be stationed in Nevada as the procurement center representative there, and I know for a fact that he is an aggressive individual, and he will help the businesses in the area of that State to find opportunities, not only in the State of Nevada, but also other opportunities around the country.

Chairman BILBRAY. I have a couple more questions. I am going to come back after I have given my colleagues a chance to ask some questions. What are you going to do to really get DOD to really co-

operate in these studies and really get involved? What is your master plan on that?

Mr. MOFFITT. Our master plan is to not rely on the DOD procuring activities themselves, but to rely on our PCR's to collect data at the installations where they are at, to record the incidence of bundlings, get the dollar value, the number, and also give an estimate of the number of requirements that were consolidated or bundled.

Also, we have instructed our people in all appropriate cases to try to break things out, or break these bundled contracts up, and to work with the DOD officials to ensure that they follow the congressional mandate to provide fair opportunities for small business.

Chairman BILBRAY. Very good. I will turn to Mr. Baker now.

Mr. BAKER. Thank you, Mr. Chairman.

Mr. Moffitt, my question goes much to the same direction of the chairman's with regard to intent. I had a meeting sometime ago with a lady from the Small Business Administration concerning the effects of base closure, and starting with that as the idea behind the question, I simply said, "What are your plans for helping this particular region with business development in the coming 18 months?" She said, "Well, if you haven't heard, they are closing a base up there, and it is not really a good place to make an investment right now."

I found that to be troublesome, because the idea is to help people make the transition and to come up with innovative ways for a business, that may have been involved in contracting with the Department of Defense that will no longer be there, to find alternative methods to survive and keep jobs alive. That is one element.

The second part is relating to a facility that was in existence, and continues to exist, which happens to be a Department of Defense installation, and to break down the barriers which appear to exist on both sides of the table. DOD folks are sometimes reluctant to get involved with a particular sole proprietor of a small service shop. They would much prefer to see a contract signed with a larger, nationally recognized firm for obvious reasons.

On the small businessman's side, they feel like they go out, look at the bulletin board, try to get information about what contracts might be coming up, but sometimes they are a little intimidated about the process and don't feel that once they have made the effort to bid that they get sufficient assistance in understanding why their bid was not accepted.

All of this has led me to a thought that perhaps, given contracting agencies of certain size, that they may by law be required, rather than suggested, to spend a certain percentage of their procurement contractual services budget line within the community in which that facility may be located in a small business with perhaps 100 or less employees; to mandate, in fact, that we have competition so that we do try to preserve lowest cost for the taxpayer, but we, at the same time, provide opportunities for local businesses which, frankly, are struggling as a result of base closures.

This report really didn't get to any of that. It, first, didn't get to the Department of Defense, period. Second, the recommendations that were formulated frankly said we need to study some more. What can we do now? Is there anything that has come from this preliminary overview that you could say to us is some action we

could take that would result in some tangible enhancement in opportunities for small businesses? Or, in fact, is the only thing we can do is to wait on more study?

Mr. MOFFITT. It was very hard for me to sign off on this report because you are correct, it does say that we need to study more and that to me is the worse thing in the world. I don't believe in studies. I believe in action.

The report does say that we feel that a uniform definition of bundling should be instituted so that a loophole the contracting officers use to not refer bundled cases to our PCR's is closed. We want to look at all those bundled requirements because we think we can identify small businesses that can perform some of those requirements, and we want to open up the opportunities to small business.

In addition, we want to go out and get from DOD and all the other Government agencies information on the bundling activity. We need that knowledge, because without it we can't make a case saying how bad small businesses are being affected. We know they are being affected, but we have no measure of magnitude. We can't even estimate it.

But I am going to instruct our PCR's to go into those procurement centers and get that information. It certainly would be helpful if Congress would consider the recommendation that says that we need help in assuring that the procuring activities are open and cooperate with our investigation; not really our information, but our search for data.

Mr. BAKER. But even without regard to the issue of intentional bundling, where an agency clearly is just not wanting to deal with local merchants for some reason, because of ease or whatever without regard to cost, isn't there some justification for a requirement that an installation which may spend \$100 million on services procurement, professional services, and there is clear historical evidence that little, if any, money has been spent within the region in which the facility is located that they contract on a national basis? Isn't there some justification for the Small Business Administration suggesting, in the defense of small business, that some allocation—as we have done for minority contractors, as an example, we by law require certain set-asides—shouldn't we require some similar set-aside for small business, and, however we wish to define it, that would generate some return of that agency's investment into the community in which it is located?

Mr. MOFFITT. I would certainly like to work with you and look at the specific instances you are concerned about to see what we can do about increasing the participation of the local firms in the procurements of that base or that procurement center. Whether or not specific legislation is required to set up a set-aside program for that, I don't know. I would have to learn a little bit more about the situation.

Mr. BAKER. Thank you.

Chairman BILBRAY. Mr. Knollenberg, why don't you take a few minutes, and, then we will come back. But certainly take a couple of questions because we have a quorum call followed by a vote, so when we leave we are probably going to be gone for 15 to 20 minutes.

Mr. KNOLLENBERG. I don't really have a question right now because I understand that we do have, as you say, some things coming up. But I will make reference to the fact that on June 20, or June 30—is that right?—we do have a hearing that will take place with respect to people from the various districts who have complaints or problems about the very thing that we are discussing here. So, I will reserve my questions to that particular session and get on with the vote.

Chairman BILBRAY. OK. We are going to leave in a second. But what I want to point out, maybe you could work with my staff a little bit while we are gone for the new few minutes, because one of the things that came to mind for me when Mr. Baker was asking you questions is I am a member of the Armed Services Committee, and it may well be that we would like to put into the authorization bill a requirement of some sort that any bundling of contracts, it is required that within some parameters that they would be referred for review to the procurement officer, and that these be made available. We could probably put that somewhere, if not in the actual text but in the report language of the authorization bill. Preferably in the text so that it be mandated like the 5 percent set-aside is presently done. So, you might want to talk to the staff a little bit while I am gone.

I am sorry we have to leave. But we are going to have to go vote and then come back. Thank you.

The meeting is adjourned for about 10 minutes.

[Recess.]

Chairman BILBRAY. The meeting is now continued.

One of my staffers, Felix Martinez, has some questions, Mr. Moffitt, that he would like to ask you for the record.

Mr. MARTINEZ. Mr. Moffitt, just a couple of questions that the subcommittee would like to get on the record. Specifically, have you come up with a more descriptive definition of the term bundling, either in the report or as part of ongoing work by the SBA?

Mr. MOFFITT. Yes; there is a definition in the statement. However, just as recently as this morning, I have modified it slightly, so, I do have a definition that I would like to submit to you.

But just briefly, bundling is the consolidation of two or more requirements, descriptions, specifications, line items, or statements of work which individually were or could be performed by small businesses resulting in a contract opportunity for supplies, services, or construction which may be unsuitable for award to small business concerns due to the diversity and size of the performance elements, and/or the aggregate dollar value of the anticipated award, and/or the geographical dispersion of the contract performance sites.

So, if I may, I would like to submit that for the record.

Mr. MARTINEZ. Is this a stronger definition, you feel, than the one that was in the report before, or is it more specific? What is the difference?

Mr. MOFFITT. I think it goes along with the one in the report. What it does is that it specifically adds construction to goods and services. It also says either the contracts that were performed by small businesses or could be performed. I think that is an important distinction, because we want to get all of those solicitations where small businesses could have a piece of.

Mr. MARTINEZ. The other question, which the chairman mentioned before the subcommittee went on recess and which was discussed on the staff level as he suggested after he left, what is the best role that you feel that the Congress and other agencies, including GAO, can play in order to take a lead in the bundling issue and begin work on it, to go forward from the study?

Mr. MOFFITT. Well, in my estimation, GAO could review the collected data, assess the impact on small business, and provide a third-party, unbiased oversight of the bundling. The directors of the Office of Small and Disadvantaged Business Utilization in areas around procuring agencies could help ensure that the contracting officers refer all bundling cases to the SBA's PCR for review and comment, and they also could begin collecting bundling data at the procuring activities where they are stationed.

SBA, in my estimation, could initiate, and we are actually going to do this, initiate the collection of bundling data at PCR resident locations. We are going to continue to review and comment on all bundling cases referred to us for review, and we are going to continue to break up bundled solicitations that reduce small business competition.

I would like to see Congress continue to take actions to reasonably protect small business. Other than that, I don't have any specific recommendations for Congress, other than what is already in the report.

Mr. MARTINEZ. Could you very briefly, for the record, point out which are the loopholes that you mentioned before which you feel need to be looked at in order to improve the PCR's access to these solicitations?

Mr. MOFFITT. Because of the definition in the Federal Acquisition Regulations for bundling that requires a contracting officer to refer cases to us, they say that it must be made up of requirements that were previously performed by small business. Now, that eliminates any new requirements, a new project, a system that is new. It also eliminates those solicitations where there has been a modification to the statement of work. Technically, the contracting officers, in some cases, feel, well, it is a new requirement; it is a modification; no one really did that before. In some cases, we have seen you might have seven requirements that had been performed by small business. They bundle those together, and then they throw in one more, an eighth one that hadn't been done by small business. But they say, "Well, that is not bundling because it all hadn't been done by small businesses."

So, I feel that the new definition would close out those two loopholes.

Mr. MARTINEZ. Finally, as the chairman mentioned, the subcommittee is also very involved in the section 800 report and Chairman Conyers' H.R. 2238. Potentially, this kind of procurement form, what effect would that have on bundling, or what needs to be watched out for in those particular areas of bundling?

Mr. MOFFITT. Concerning the section 800 report, I don't see any direct connection to bundling. However, I believe that thought must be given to the needs of small business in the implementation of the report recommendations, and I recommend overall caution and oversight be exercised when those report recommendations are

being considered. Now, many of them are favorable to small businesses. However, a lot of times, small business interests are overlooked in the apparent greater good of streamlining the acquisition process.

As far as the small purchase threshold, raising the threshold and the use of EDI paperless procurement systems will provide small businesses with additional opportunities. It will also speed up the procurement process for acquisitions under the threshold and will save the Government money. All these things, I think, are beneficial, and, in some cases, this could give the contracting agencies an alternative to bundling. If they can get the procurements out quicker with the raised threshold, it would be more economically feasible maybe to split some of these large requirements up, put them under the threshold, and put them out as individual solicitations—of course, following the requirements of the Federal Acquisition Regulations.

Mr. MARTINEZ. That is all we have for now. I think we will put anything else in writing, Mr. Chairman.

Chairman BILBRAY. Mr. Moffitt, It took us a while to get a procurement officer for southern Nevada. How many procurement officers do you have presently in the system?

Mr. MOFFITT. Currently, we have about 73; approximately 63 full time, and we have about 10 part time.

Chairman BILBRAY. OK. Because, up until we got the one in southern Nevada, of course, the procurement officer we were working with was out of California, which could only give us a very, very small percentage of the time.

You mentioned the fact that you deal directly with your procurement people. You fire them up to get out there and work on these problems. In going through the budget of the Small Business Administration, looking at the number of employees and where they are, could we readjust that and get more procurement officers and less of something else? I mean maybe you could give us, through Mr. Bowles, a recommendation of where we can get more procurement officers, because I think that the bread and butter right now is the procurement officers, and the fact that we have 63 full time. How many employees are there in the Small Business Administration?

Mr. MOFFITT. There are about 4,000.

Chairman BILBRAY. About 4,000.

Mr. MOFFITT. Of those 4,000, about 290 are in procurement assistance nationwide.

Chairman BILBRAY. OK. So, what I would like to do is have you working with my staff and letting the Administrator know that we are very, very concerned. I would like to see some sort of readjustment so that more people are in the procurement area and less, maybe, in some other area. I am not saying other areas aren't very well needed, and they don't do the job they are supposed to do. But in looking at the priority—I look at the Department of Agriculture, even though I don't sit on that committee, and I see—remember the common joke. The extension officer crying because his one farmer died.

We know right now, for instance, in the West about 70 percent of all SBA loans and the activity is in the Western Pacific Coast

States, yet, 10 percent of all SBA employees are in the Western States. Just because of the number of years that have gone by and that shifting of priorities has gone West, and yet the necessary assets haven't necessarily headed that way.

We feel enthusiastic in our district because we have got a procurement officer, and we think this will really help. Maybe we are being too optimistic, but we think that this is a step in the right direction. At the same time, there is still about 350 congressional districts out there, or subdivisions of some sort, that don't have anybody, except on a part-time basis or assigned from someplace else who has to travel there to try to help them. They are certainly available on the telephone, but they are not there on a day-by-day basis where they have the hands-on experience.

So, if you could look at that, I think that would be very important to us, to see if we can't shift priorities. I certainly don't want to hurt other programs that need all the assets they can get, because in an ever-growing, shrinking budget you are probably going to deal with less and less people. But there might be areas that could certainly have cutbacks in staffing to be prioritized over in the procurement that we could do some good and maybe get some more procurement officers out there.

So, if you could look at that, and you deal with my people on that, and we will certainly go to the chairman of the committee if there is such a recommendation. If it needs to be done by legislation, we will certainly work that way. On the other hand, it might be able to be handled administratively, where you can actually re-assign some of these people. I think it is very, very important that we do that, because I think your position within Small Business is where the bread and butter is. I mean if we can't get the contracts, we can't get our people going.

Another area certainly—I know it is not within procurement but it is kind of indirectly—is the bonding issue. Please look at that because one of the biggest concerns that my bonding people, my contractors, and my business people have is that they can't get the bonds to the right amount, and when they do get the bonds where the bigger contractor is paying a half or a quarter of a percent bond, they are paying 5 or more percent, and they end up having to bid so much higher because they ended up with another 5 percent on top of their costs that the other contractors don't have. We have really got to look at that. Maybe a better method of waiving bonds in certain cases or having a lower bond rate within the agency to cover some of these people.

If you would look at that, I would appreciate it. It is one thing to have the contracts available and go out there through your procurement officers and say we have these contracts available. But if the business people in the community can't bid on it because they don't have the bonding capacity to bid on it, or they bid too high because of the additional bonding cost, it doesn't do much good to have those contracts made available for small business because we get buried.

We also find, to be honest with you, that maybe a small percentage of the small businesses get 90 percent of the business, basically because they do have the bonding capacity, and they do have the low interest rate they get on the bonds. So, they still meet the

small business requirement, but they are the ones who are able to grab all the business. Some of them are big business in a small business guise and have maintained their small business classification by really working it very, very thoroughly through their legal counsel or others.

So, we really need to give some of these smaller small businesses the real opportunity to compete, whether they are minority owned or not minority owned.

Mr. MOFFITT. I agree with you 100 percent, Mr. Chairman. Mr. Bowles in his acceptance speech promised the President he would accomplish four things at SBA, and one of them was to reorganize, and redistribute where necessary, the resources to ensure a more effective administration. So, I will be talking with Mr. Bowles about your recommendations and your suggestions. I agree with you 100 percent that we need to also look into the bonding issue, because if a company can't get a bond, all the opportunities in the world don't make any difference.

Chairman BILBRAY. If the bond costs too much, it kills the contractor.

We would like to thank you again for coming here. We are looking forward to many meetings with you in the future. This committee wants to work with you and help propose legislation. If you have ideas that we should stick into authorizations or into our own authorization, we will be happy to work with you on that. My staff is available at any time. Thank you for coming today.

The hearing is concluded.

[Whereupon, at 3:00 p.m., the subcommittee was adjourned, to reconvene subject to the call of the chair.]

A P P E N D I X

**Opening Statement of the
Honorable James H. Bilbray
Chairman
Subcommittee of Procurement, Taxation and Tourism
of the
Committee on Small Business**

June 10, 1993

"Receipt of the Report from the Small Business Administration to the House Committee on Small Business on the Impact of Contract Bundling on Small Business Concerns and Practical Recommendations."

Today, the Subcommittee embarks on one of its most important responsibilities; the protection of small business mandates in federal procurement. Of particular concern to the Subcommittee in this area, has been the practice by a number of federal agencies of "bundling" a number of small contracts into one large contract, contracts that could have traditionally been given to small businesses.

I have been in recent contact with both President Clinton and OMB Director Panetta on the issue of protecting small business participation in small business. I have received extremely direct and committed remarks from both of them with their support for this issue and at this time I would like to enter them into the record. However, despite the White House's commitment to the protection it appears that small businesses are still being used as the scapegoats for shoddy and irresponsible cost cutting.

In a time of ever shrinking federal budgets and streamlining, small businesses are more aware than most that many contract opportunities are in jeopardy. However, it is patently unfair for small business to be denied contracts because federal procurement officers are trying to cut corners and not take the time to include small businesses in solicitations. Let me assure all of you that the Subcommittee will be pursuing this issue very aggressively.

Today, we have Associate Administrator Robert Moffitt of the Small Business Administration come before us to present to this Subcommittee and the Committee the efforts of the SBA to begin an investigation of this issue. As Mr. Moffitt headed the team that undertook this effort, I am very pleased to have him here to present to us his insight into this issue. I do regret that Administrator Bowles was unable to also join us, but I understand that Mr. Moffitt brings with him a letter stating the Administrator's deep concern about this matter and the SBA's desire to lead on this issue.

This report was mandated in last year's Small Business Credit and Business Opportunity Act of 1992, which became public law 102-366. Section 321 of that legislation called upon the SBA to undertake a study of the question of bundling. Unfortunately, due to lack of data available, this report raises far more questions than it answers. The one clear conclusion is that

a number of agencies have chosen for years to brush questions regarding this practice under the rug and have opted to continue a practice that clearly prohibits small business from receiving millions of dollars in contracts. I am also particularly concerned that the two agencies that account for 70% of federal procurement, the Department of Defense and NASA, did not submit information to the study.

The Subcommittee will be asking a number of questions of Mr. Moffitt in order to try to gain some insight into the work that remains to be done and to truly gain some foothold in the gaps that are part of this report. The importance of the hearings this subcommittee will hold is also heightened by ongoing Congressional procurement reform efforts in which this subcommittee is also participating, specifically the Section 800 report by the Department of Defense and Chairman Conyers bill HR 2238. It is imperative that before any substantial reform efforts are attempted, the problem of bundling be rectified and its eradication be an intricate part of any Congressional efforts.

As I have stated, there are a lot of questions which remain unanswered in this report, and I trust that Mr. Moffitt's expertise will shed some light on these questions.

**OPENING STATEMENT by
CONGRESSMAN RICHARD H. BAKER, RANKING MEMBER**

Subcommittee on Procurement, Taxation & Tourism

**June 10, 1993 Hearing on "The Impact of Contract Bundling on
Small Business Concerns and Practical Recommendations"**

Mr. Chairman, I thank you for calling this hearing on an issue of critical importance to our subcommittee. I am genuinely pleased to take part in this program since it is designed to afford greater protection to small businesses nationwide from directives issued by many federal agencies.

The subject matter of today's hearing is the impact of bundling of federal government contract work on small businesses. I have reviewed the written testimony offered by Mr. Robert Moffitt, Associate Administrator of the SBA, and it is abundantly clear that this procurement process is adversely impacting small businesses in the U.S. I look forward to hearing the expanded debate this afternoon as we continue to educate and to enlighten Members of Congress on the finer points of this troubling issue.

The practice of bundling comes under many names, but the result of this increasingly used practice is clear -- small businesses are seeing a substantial restriction of their participation in the competitive bidding process. I certainly commend every federal agency that is trying to streamline its procedures in

order to save administrative costs. However, to the extent that this practice limits opportunities for qualified small businesses to compete for federal contacts I am distressed.

I am particularly sensitive to the bundling issue because of contracting procedures employed by the Environmental Protection Agency concerning a Superfund site in my district. Many constituents, local businesses, and local and state elected officials have contacted me and raised concerns over whether local small businesses will have a full and fair opportunity to bid for work during the remediation process to be performed at the American Creosote Works, Inc. site in Winnfield. This concern is confirmed by the U.S. Small Business Administration's Report to the Committee on Small Business. This hearing is an excellent forum to explore and to question the actions of federal procurement officers when bundling negatively impacts small businesses seeking to participate in the government contracting process as it is intended by controlling federal law.

For these reasons, the testimony and comments this afternoon will serve to instruct the Subcommittee on this issue, and myself particularly as it concerns ongoing situations in my own congressional district. I thank you all of the panelists for their participation and thank the distinguished Chairman for exploring this critical issue at this time.

THE WHITE HOUSE
WASHINGTON

May 13, 1993

Dear Mr. Chairman:

Thank you for your letter of April 21, 1993, regarding my Administration's commitment to aiding and supporting the development of small businesses in this country.

We are fully committed to preserving and achieving the minimum government-wide goal of 20 percent small business participation in federal contracting. Small businesses are a fundamental and critical source of supply for the federal government and their value cannot be overstated. In addition, small business growth and development is essential if we are to expand our employment rolls and remain competitive globally.

Again, thank you for your support for our efforts and we look forward to working with you to assist small businesses.

With best wishes,

Sincerely,



The Honorable James H. Bilbray
Chairman
Subcommittee on Procurement, Taxation,
and Tourism
Committee on Small Business
House of Representatives
Washington, D.C. 20515



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

April 8, 1993

Honorable James H. Bilbray
Chairman
Subcommittee on Procurement, Taxation,
and Tourism
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515-6317

Dear Mr. Chairman:

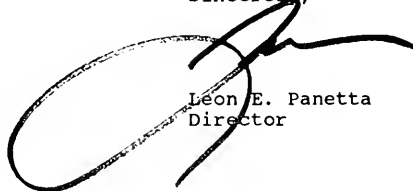
Thank you for your letter of March 18, 1993, regarding your concerns that access to Federal procurement be maintained for small business firms, and that opportunities for such firms in the Federal marketplace be preserved.

I agree completely. Small businesses are a vital element of the President's development package, and we will do whatever we can to promote their participation in Government contracting.

I hope that the services contracting review which the agencies are undertaking will in fact help small business. The review is aimed at ensuring that the Government gets what it pays for and at a cost-effective price. But it is also aimed at seeing that there is adequate competition for contract awards. In our view, the greater the competition, the greater the opportunities for small business. You can be assured we remain committed to preserving the minimum Government-wide goal of 20 percent small business participation in Federal procurement.

Again, thank you for your letter and your support for our efforts.

Sincerely,



Leon E. Panetta
Director



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

JUN 10 1993

Honorable James H. Bilbray
Chairman
Subcommittee on Procurement, Taxation,
and Tourism
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Since I could not personally attend the Subcommittee's hearing today on the issue of bundling of federal contracts, I ask that this letter be submitted as part of the hearing record to assure the Subcommittee and the small business community that this issue has my attention and concern. It is essential that small businesses be active participants in the federal procurement process. President Clinton is committed to achieving the minimum government-wide goal of 20 percent small business participation in federal procurement opportunities, and my mission is to ensure the fulfillment of that commitment.

As to the SBA study on the impact of contract bundling, presented to the Congress on May 15, 1993, 97 percent of the small business respondents stated that bundling adversely affected small businesses. These businesses stated that bundling resulted in restriction or diminution of their participation in competitions.

The study also revealed a need for more extensive study of the issue and a need for certain items to be in place before a meaningful study could be conducted. For example, there needs to be a single definition of bundling. Also a mechanism for collecting data regarding the use of bundling and its effect on costs is necessary. More details on the study's findings and recommendations are contained in SBA's testimony that Mr. Moffitt will present at today's hearing.

Thank you and the Subcommittee for your interest in small business and this important issue and allowing the SBA to be a participant.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence B. Bowles".

Lawrence B. Bowles
Administrator



STATEMENT OF
ROBERT J. MOFFITT
ASSOCIATE ADMINISTRATOR FOR PROCUREMENT ASSISTANCE
U.S. SMALL BUSINESS ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON PROCUREMENT, TAXATION, AND TOURISM
OF THE
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
JUNE 10, 1993

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am Robert J. Moffitt, Associate Administrator for Procurement Assistance. Erskine Bowles, the SBA Administrator, asked me to speak on behalf of the Agency. He regrets that he cannot be here and asks that I read this letter and have it submitted for the record.

I am pleased to be able to appear today to discuss the SBA study on contract "bundling" in Federal government contracts and the issue in general. The practice, also known as consolidation, umbrella contracting, or by any other name to mean the aggregation of contract requirements, is widely believed by our small business constituency to be adverse to their interests.

As a prelude to my discussion of the recent study conducted by SBA, the following historic perspective is of interest. The Small Business Act clearly states Congressional intent that a fair portion of the Federal government's purchases are to be placed with small business concerns. To encourage successful small business participation in the Federal acquisition process, the Federal Acquisition Regulation (FAR) enumerates specific procurement practices which increase that likelihood. For example, these practices include dividing proposed large

acquisitions of supplies or services into smaller portions of similar products or disciplines to permit offers on quantities less than the total requirement; and, planning acquisitions so that, if practicable, more than one small business concern may perform the work.

Notwithstanding the Federal policy, there has been lingering concern about consolidating or bundling procurement requirements by Federal departments and agencies into "umbrella contracts." Ninety-seven percent of all respondents to SBA's recent study of contract bundling indicated that this practice diminishes small business competitive participation in federal procurements. Eighty-six percent of the small business respondents believe that they will be restricted in their opportunity to increase sales, strengthen their cash flow, improve profitability, enhance employment by the creation of jobs, and increase their growth potential as contract bundling practices spread.

We have speculated that as federal contracting activities downsize their staffs, the incidence of bundling will increase. Interestingly, 76 percent of all the study respondents confirmed this opinion saying that contract bundling will provide an opportunity to operate more efficiently through acquisition streamlining, economies of scale, quantity discounts, and the promotion of standardization of products and services. Nonetheless, we believe that this anticipated trend does not justify or relieve federal procurement officials of their

responsibility to maximize small business access to contracting opportunities. SBA realizes that in some cases bundling or consolidating contract requirements is a wise decision when to do so would likely be significantly less costly or is the only practical way to satisfy a procurement need. It appears that the practice of awarding umbrella contracts is more suited to unpredictable or nonroutine work, such as developing a weapons system where the magnitude of the effort and costs may be harder to estimate in advance, and a contractor's technical expertise may need to weigh more heavily in making the award. Various General Accounting Office (GAO) reports support our contention that when used to contract for routine work, bundled requirements may result in higher prices and may preclude the ability of small business to compete for these prime contracts. GAO issued a 1983 report entitled, "How Selected DoD Consolidated Efforts Affect Small Business Opportunities," which was followed in 1987 by a procurement report entitled, "Opportunities to Use More Preferred Practices for Base Support Contracts." Both of these reports concluded that "consolidated procurements have the potential for limited prime contract awards to small business firms and may not always result in the lowest cost to the Government."

At this point I would like to present the results of SBA's study of the impact of contract bundling on small business concerns and the development of recommendations, as directed by Public Law 102-366. The prime concern of the study was to assess the impact of contract bundling, which is defined

in the law as "the practice of consolidating into a single large contract solicitation multiple procurement requirements that were previously solicited and awarded as separate smaller contracts, generally resulting in a contract opportunity unsuitable for award to a small business concern due to the diversity and size of the elements of performance specified and the aggregate dollar value of the anticipated award."

I will address the methodology used to conduct the study; each of the six issues studied; and the recommendations that resulted from the study findings.

SBA developed a study plan which was published in the *Federal Register* on November 25, 1992 and in the *Commerce Business Daily* on December 2, 1992. On February 8, 1993, OMB approved the questionnaire which was crafted by SBA to solicit comments on the six specific issues from the target audience delineated in Public Law 102-366. The questionnaire mailing to the target audience was completed February 12, 1993. The target audience consisted of SBA personnel, including procurement center representatives; 17 Federal government officials; 127 national small business and trade councils and associations with a small business constituency; 370 randomly selected small businesses. Comments from small businesses who responded to the *Commerce Business Daily* announcement were also reviewed and considered in the development of the bundling study report. Additional sources of data, e.g., GAO reports, Comptroller General Decisions and

Federal Procurement Data Center statistics were also reviewed and considered.

The study resulted in the following findings of the six study issues:

1. Identify the benefits and adverse effects of contract bundling on procurement activities in the Federal government departments/agencies participating in this study.

The impact of bundling is twofold. First, 318 study respondents (consisting of 84 small businesses, 220 SBA personnel, 3 associations and 11 Offices of Small and Disadvantaged Business Utilization (OSDBUs)) speculate that contract bundling would give federal procurement activities an opportunity to operate more efficiently through acquisition streamlining, economies of scale, administrative cost savings, and the promotion of standardization of products and services.

Secondly and conversely, 101 study respondents (consisting of 39 small businesses, 56 SBA personnel, 4 associations and 2 OSDBUs) indicated that contract bundling may also have a negative effect on procurement activities in the federal government by diminishing competition, especially small business participation. Observations among the study respondents cited concerns that reduction of small business participation in competitive federal procurements as a

result of bundling would proportionately result in contract awards being vested with large businesses. The respondents further cited that large businesses typically have higher operating costs reflected in higher overhead and other expenses. In addition, the management of a large, diverse contract may result in a less efficient procurement system with a greater total cost to the government. These diverse findings, when considered as a whole, will negate potential cost savings.

2. Identify the benefits and adverse effects of contract bundling on small business concerns.

408 study respondents (97 percent) stated that contract bundling would adversely affect small business concerns by restricting small business competition. Small businesses may often lack the financial strength and personnel resources for the larger, more diverse contracts requiring a myriad of expertise. The complexity and variable skill requirement may preclude small business participation. Small businesses would also have difficulty in competing for large same product/service procurements for a large geographic area. The recent study did not reveal any benefits for small businesses as a result of bundling.

3. Examine the adequacy of existing procurement policy and direction on contract bundling.

Public Law 101-574, section 208, amended the Small Business Act, section 15(a) on November 15, 1990 to include a requirement for the review of proposed bundled acquisitions by SBA's procurement center representatives (PCR). The Federal Acquisition Regulation subpart 19.202-1(e)(2) was also amended to reflect this requirement.

The regulation requires federal contracting activities to submit all proposed bundled requirements to the PCR at least 30 days prior to the issuance of the solicitation if the proposed acquisition is for supplies or services which are currently being provided by a small business and the magnitude of the resultant bundled acquisition makes it unlikely that a small business could compete for the prime contract.

Buying activities construe bundling as applicable only to those cases in which there is already small business participation. Further, new and/or modified requirements are not considered bundling because they do not have an incumbent contractor. Therefore, these actions are not submitted to the PCR for review as bundled acquisitions. Similarly, many contracting officers feel that they are exempted from the requirement to justify their bundling action. This further supports SBA's recommendation for a more generic definition of contract bundling which is provided at the conclusion of this statement under

Recommendation 1.

4. Examine the extent to which procuring activities have been combining requirements for goods, services and construction into solicitations requiring an offeror to be able to perform increasingly larger contracts covering multiple and diverse elements of performance.

Introductory to this discussion it is important to note that the federal government has not developed a statistical bank of historical bundling data. Further, the definition of bundling in P.L. 102-366 technically varies from the parameters listed in section 208 of P.L. 101-574 and FAR 19.202-1(e)(1)(i).

In response to this question, 304 respondents (73 percent) indicated that federal activities only moderately bundle requirements. However, many of the government respondents indicated that within the current federal environment of "doing more with less," contract bundling can be expected to increase at a rapid rate.

Separately, the Office of Small and Disadvantaged Business Utilization respondents indicated that their agencies only moderately bundled requirements if at all based on the FAR definition. As mentioned previously, the OSDBU only treat an acquisition as bundled if its components are currently

being performed by a small business. Consequently, new requirements or modified requirements are not treated as bundled actions because there are no predecessor small business contractors. This reality makes SBA's recommendation of a more complete definition of bundling even more significant.

5. Consider the appropriateness of the explanatory statements submitted by the procuring agencies pursuant to section 15(a) of the Small Business Act regarding bundling of contract requirements.

Section 15(a) of the Small Business Act requires procurement activities to provide a copy of the proposed procurement to the SBA PCR 30 days prior to the solicitation's issuance along with a supporting statement.

122 (42 percent) of the 289 federal respondents indicated that they were unable to answer this question since federal activities do not have a mechanism for collection of data regarding the use of bundling. The remaining federal respondents were divided with 31 percent saying that the statements were appropriate and supportable, while 27 percent indicated that the statements were not appropriate and supportable. This situation strongly supports SBA's recommendation to develop and impose a mechanism for collection of contract bundling data, as well as to revise

the FAR descriptors.

6. Determine whether procurement center representatives, small business specialists, or other agency procurement officials can, under existing guidance and authority, have the necessary policy direction and effective authority to make an independent assessment regarding a proposed bundling of contract requirements.

The study results reflect that the FAR definition is too narrow. It excludes requirements which have been modified, even if they were formerly performed by small business. Also excluded from bundling considerations are new requirements. The existing guidance should be revised to provide a more generic definition of bundling.

Assuming a more inclusive definition of bundling, the FAR at section 19.202-1 provides adequate authority for PCR review of proposed bundling actions. However, comments and recommendations of the SBA PCR are advisory only and the contracting agency has final authority on bundling.

Several conclusions can be drawn from this study. Singly and in combination they lead primarily to the need for a more extensive review of the bundling issue over an extended time frame. Results of the study indicated that:

1. The collection and discussion of bundling issues is hindered by use of different definitions of the term, "bundling." Federal buying activities construe the word to mean only those cases in which there is already small business participation. New or modified requirements, even if formerly performed by a small business, are outside the current FAR definition of bundling.
2. Presently, there is no provision or mechanism for Federal departments and agencies to report or collect data regarding the dollar value or number of bundled contracts. Therefore, it is difficult to assess the impact of the bundling practice on small business. Likewise, no data is collected on the number or dollar value of contracts that small businesses have lost due to bundling.
3. As discussed in the Conclusions of the report, the view that bundling provides a cost effective reduction in administrative costs is an unsupported, intuitive opinion. No studies have been found which would conclusively support the presumption that bundling has the effect of increased efficiency or reduced administrative costs for the Government.
4. Similarly, the concern about bundling having a negative impact on small business participation is unsupported by data other than anecdotal, theoretical, or informed opinion

evidence.

5. A more extensive study over expanded time frames could provide meaningful data which could resolve many of the issues identified in this study. SBA believes that a longer term, more extensive study may result in:
 - a. the identification of specific solicitations, encompassing varied industries and geographic areas that were previously performed under more than one contract;
 - b. the ability to research the incidence of separate requirements and the predecessor contracts to determine the actual contract value for performance as separate and bundled contracts;
 - c. the review of these contracts and the buying activity environment to determine if the level of competition by small business varied from that experienced before a requirement was bundled;
 - d. knowing if an increase or decrease in the level of small business subcontracting and the comparison of previous awards to small business as prime contractors versus subcontractors as a result of bundling; and

- e. the examination of the effect of bundling on staffing needs at buying activities to determine if workload associated with administration of contracts increased or decreased; and if staffing patterns were adjusted commensurate with the degree of contract administration requirements.

Based on the study findings, SBA concluded its report by presenting for Congressional consideration the following five recommendations:

Recommendation 1 -

A single definition of bundling be adopted and used in all discussions on contract bundling:

Definition: Bundling is the consolidation of two or more descriptions, specifications, line items, or statements of work (even if modified) previously awarded as separate smaller contracts; resulting in a contract opportunity for supplies or services which may be unsuitable for award to a small business concern due to the diversity and size of the performance elements; and/or the aggregate dollar value of the anticipated award; and/or the geographical dispersion of the contract performance sites.

Recommendation 2 -

A mechanism be developed and imposed on Federal contracting activities to collect data regarding the use of bundling.

Recommendation 3 -

Congress consider committing financial and other resources, including sufficient time, for SBA to confirm assertions about savings or improvements to administrative effectiveness and the actual effect of bundling on small business participation in the procurement process.

Recommendation 4 -

Obtain assistance from GAO to provide greater expertise in addressing the issues of contract cost and cost-effectiveness that resulted from SBA's bundling study.

Recommendation 5 -

In addition, SBA will take responsibility for the collection and recording of all federal procurement bundling activities wherever PCRs are located in residence. This would be contingent on a legislative initiative requiring maximum cooperation by all

corresponding procuring activities and establishing a single definition of bundling for this purpose.

This concludes my statement, Mr. Chairman. I would be pleased to answer any questions that you have.



ISBN 0-16-043280-4



